

EXHIBIT 4

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 PRESTIGIOUS SHIPPING,

4 plaintiff,

5 v.

07 CR 7101

6 AGROCOP INTERNATIONAL,

7 Defendant.

8 -----x
9 New York, N.Y.
September 4, 2007
2:46 P.M.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 WAESCHE, SHEINBAUM & O'REGAN, PC.

15 Attorney for John Foster
BY: JOHN FOSTER, ESQ.

16 AGROCOP INTERNATIONAL

17 Attorney for Defendant
BY: OWEN F. DUFFY, ESQ.

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<p style="text-align: right;">Page 2</p> <p>1 (Case called)</p> <p>2 THE COURT: All right. Ergonomic chair. So much</p> <p>3 better, thank you. Okay, I have read the papers. Let's see if</p> <p>4 I can get the facts straight. Or let's see if I have gotten</p> <p>5 the facts straight. Agrocorp bought rapeseed in the Ukraine.</p> <p>6 MR. DUFFY: Yes, your Honor.</p> <p>7 THE COURT: Right. And it proceeded to sell the</p> <p>8 rapeseed to somebody else.</p> <p>9 MR. DUFFY: In a back-to-back transaction, yes. And</p> <p>10 it had its bank, Indian Bank, finance the transaction.</p> <p>11 THE COURT: Right, but Indian Bank did not issue a</p> <p>12 letter of credit. Indian Bank was supposed to do a letter of</p> <p>13 credit transaction with Agrocorp's purchaser.</p> <p>14 MR. DUFFY: Ultimate buyer, yes.</p> <p>15 THE COURT: The ultimate buyer.</p> <p>16 MR. DUFFY: That's correct.</p> <p>17 THE COURT: What Agrocorp or what Indian Bank did for</p> <p>18 Agrocorp was pay the money that Agrocorp would otherwise have</p> <p>19 had to pay, or that Agrocorp owed, to the person in the Ukraine</p> <p>20 from whom he bought the rapeseed.</p> <p>21 MR. DUFFY: Correct, your Honor.</p> <p>22 THE COURT: Okay. And that's the money that was going</p> <p>23 through the electronic fund transfer process here in New York</p> <p>24 when it was netted.</p> <p>25 MR. DUFFY: Correct, your Honor.</p>	<p style="text-align: right;">Page 4</p> <p>1 the money under the other transaction. This is what banks do.</p> <p>2 They make money off the backs of other people's transactions,</p> <p>3 they get interest, and this is part of their normal business.</p> <p>4 This was not an alter ego situation. They were not paying a</p> <p>5 debt for Agrocorp because they were trying to accommodate them</p> <p>6 in a Rule B situation. They were trying to make money. And</p> <p>7 they said, fine, we'll do the same thing. You give me a trust</p> <p>8 receipt, I take title to the cargo. I have full right to</p> <p>9 collect money from the ultimate seller, and I'm never debiting</p> <p>10 your account. I'm not – I'm not giving you a loan. This is a</p> <p>11 finance transaction where I'm going to make some money and you</p> <p>12 can make your money. And that's why I submit to you it is the</p> <p>13 same case as Prime Shipping, in a little different posture.</p> <p>14 THE COURT: Okay. Why is this not Prime Shipping? I</p> <p>15 mean I know it is not a letter of credit. I, to be quite</p> <p>16 honest, know a lot about letters of credit and nothing</p> <p>17 whatsoever about trust receipts. But is there a difference</p> <p>18 between a trust receipt and a letter of credit, that makes a</p> <p>19 difference?</p> <p>20 MR. FOSTER: Yes, your Honor. And I think the</p> <p>21 critical difference between the two cases is that, in Prime</p> <p>22 Shipping, there was a negotiable letter of credit which the</p> <p>23 bank there, BNP Paribas, had purchased, and the proceeds that</p> <p>24 were locked were going to in payment of that letter of credit.</p> <p>25 So that at the time of the attachment, the defendant didn't</p>
<p style="text-align: right;">Page 3</p> <p>1 THE COURT: Right. Okay.</p> <p>2 The money that Indian Bank was extending to pay the</p> <p>3 debt that was owed by Agrocorp for the rapeseed that Agrocorp</p> <p>4 bought in the Ukraine, right. So why is this not just exactly</p> <p>5 like Judge Pauley's case?</p> <p>6 MR. DUFFY: Your Honor, I think – if I may, Judge</p> <p>7 Pauley's case, first of all, was a completely different case.</p> <p>8 That was an alter ego situation where there were two related</p> <p>9 companies, Mar Trade and Mar Logic.</p> <p>10 THE COURT: Right. And one was being used to pay the</p> <p>11 debt of the other.</p> <p>12 MR. DUFFY: And in obvious method to –</p> <p>13 THE COURT: To circumvent this ridiculous Rule B</p> <p>14 attachment situation that has turned into such a nightmare for</p> <p>15 everyone, especially since the Winter Storm case.</p> <p>16 MR. DUFFY: Correct, your Honor. And in that case,</p> <p>17 they came right out in front of – Judge Pauley found, look,</p> <p>18 you're both doing the same business, you're doing the business</p> <p>19 of one or the other, you're an alter ego. That's why I would</p> <p>20 submit to you that this case in front of you is more along the</p> <p>21 lines of prime shipping, although we don't have a letter of</p> <p>22 credit issued by our bank. But what our bank did, Indian Bank,</p> <p>23 they bought those bills of lading. They were not going to pay</p> <p>24 any money until somebody gave them bills of lading and they</p> <p>25 applied title to the cargo which they could then present to get</p>	<p style="text-align: right;">Page 5</p> <p>1 have any interest in the letter of credit or its proceeds</p> <p>2 because it had negotiated it away.</p> <p>3 THE COURT: That, I understand. And your opponent</p> <p>4 says that – if I understand his argument correctly, that</p> <p>5 Agrocorp had negotiated away its interest in – its financial</p> <p>6 interest in this transaction, although its financial interest</p> <p>7 was as a payor of the payee, owed money. That it had</p> <p>8 negotiated that away. Because it had sold the bills of lading</p> <p>9 to Indian Bank in exchange for Indian Bank's agreeing to take</p> <p>10 over the obligation of making payment for the cargo. It was</p> <p>11 out. It was out. It is saying it is just as out as somebody</p> <p>12 who holds an underlying debt but who arranges to make payment</p> <p>13 for it through a letter of credit. Where, as Judge Rakoff</p> <p>14 absolutely correctly indicated, the bank's obligation to honor</p> <p>15 the letter of credit is completely independent of the</p> <p>16 underlying debt. The underlying debt may be a bad debt, that</p> <p>17 is too bad. That gets resolved some other time. If the proper</p> <p>18 papers are presented at the bank window, the bank must pay out</p> <p>19 on the letter of credit. And I – as I say, I don't – I never</p> <p>20 heard of a trust receipt before today. I don't know what that</p> <p>21 makes me. But as it's being explained to me, what is the</p> <p>22 difference that makes a difference between a trust receipt and</p> <p>23 a letter of credit.</p> <p>24 MR. FOSTER: Well, one difference, your Honor, which</p> <p>25 is of significance, is that letter of credit is a negotiable</p>

<p style="text-align: right;">Page 6</p> <p>1 instrument, and a trust receipt is more like a security 2 interest. And the importance of that goes back to, again, the 3 idea that when the proceeds on the letter of credit were sent 4 to Paribas, they were going to an outfit that at that time 5 owned the letter of credit.</p> <p>6 In this particular case, your Honor, going back to, 7 you know, your initial line of reasoning, is that the seller in 8 Ukraine issued invoices to Agrocorp which are exhibits to 9 the --</p> <p>10 THE COURT: Right. And whatever the -- whatever -- as 11 far as they were concerned -- the money was going to the 12 Ukraine when it was intercepted, right? The invoices were 13 being --</p> <p>14 MR. FOSTER: Apparently so.</p> <p>15 THE COURT: The invoices were being paid. That was 16 the purpose of the -- whether it was coming from Indian Bank or 17 Agrocorp, it was to pay those invoices.</p> <p>18 MR. FOSTER: Right, your Honor. Those invoices that 19 were addressed to Agrocorp, which were the debt of Agrocorp.</p> <p>20 THE COURT: Right.</p> <p>21 And India Bank had said we'll take on your debt in 22 exchange for title to the rapeseed which we will then make a 23 little money on when we factor it over to the ultimate seller.</p> <p>24 MR. FOSTER: Well, your Honor, I --</p> <p>25 THE COURT: That --</p>	<p style="text-align: right;">Page 8</p> <p>1 as the purchaser of the negotiable letter of credit?</p> <p>2 MR. FOSTER: If I understand your Honor correctly, I 3 think that is right, I mean in that --</p> <p>4 THE COURT: I mean it is just silly to say that 5 Agrocorp was not going to end up with its profit on the 6 transaction. It wasn't out. It was going to end up with some 7 money.</p> <p>8 MR. FOSTER: Right, your Honor.</p> <p>9 THE COURT: Less some fee to Indian Bank.</p> <p>10 MR. FOSTER: Right, your Honor. In other words, I 11 mean just to use numbers, it was buying it -- the rapeseed from 12 the people in Ukraine for a hundred dollars and selling it to 13 the ultimate purchaser for \$150. Indian Bank was advancing 14 that hundred dollars, and from the ultimate proceeds would get 15 that hundred dollars back with Agrocorp keeping it's \$50. But 16 as part of --</p> <p>17 THE COURT: That would involve Agrocorp keeping \$47 18 because Indian Bank would always take a fee.</p> <p>19 MR. FOSTER: Yes, your Honor.</p> <p>20 THE COURT: I mean there is no reason to do this 21 otherwise.</p> <p>22 MR. FOSTER: Right exactly.</p> <p>23 But as part of this, Agrocorp incurred a debt to the 24 people at the Ukraine which Indian Bank -- and for which there 25 were invoices which Indian Bank was then transferring money to</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. FOSTER: I wouldn't put it quite that they were 2 taking over the debt. What they were doing was taking over the 3 documents on the underlying transaction so that they could 4 then, in turn, pass them on to the ultimate purchaser, get the 5 money, keep what it had advanced on its payment with the 6 difference going to Agrocorp.</p> <p>7 THE COURT: I'm not sure I understand where the money 8 was. The money was on its way to the Ukraine, right?</p> <p>9 MR. FOSTER: Yes, your Honor.</p> <p>10 THE COURT: The money was on its way to the Ukraine. 11 On its way to pay off the original purchase price of the --</p> <p>12 MR. FOSTER: Rapeseed.</p> <p>13 THE COURT: Of the rapeseed. Okay. That was a debt 14 that was incurred by Agrocorp.</p> <p>15 MR. FOSTER: Yes, your Honor.</p> <p>16 And in return for that, the bank would get the 17 documents, like the bill of lading and the other shipping 18 documents, which it could then pass on to the ultimate buyer. 19 The ultimate buyer would make the payment, which would go to 20 Indian Bank. Indian Bank would keep what it had advanced and 21 credit the difference to Agrocorp, which was Agrocorp's profit 22 on it.</p> <p>23 THE COURT: Right. And, eventually, Agrocorp was 24 going to end up with some money here, so -- and isn't that the 25 reason that Indian Bank is not in the same position as Paribas</p>	<p style="text-align: right;">Page 9</p> <p>1 satisfy.</p> <p>2 THE COURT: Correct. All right. And you're position 3 on the Judge Pauley case is that it doesn't make a difference 4 that the two entities were corporately related --</p> <p>5 MR. FOSTER: No, No, your Honor.</p> <p>6 THE COURT: -- and that one -- and that they were 7 trying do a slight of hand.</p> <p>8 MR. FOSTER: No, your Honor. I mean this case doesn't 9 involve that. I mean from everything that counsel has 10 presented, it looks like a straightforward financing 11 transaction. So there is none of the funny business going on 12 in that respect. But it does go back to the basic point which 13 Judge Pauley addressed, which was what does intangible property 14 in Rule B mean. And he gave it as the Second Circuit did in 15 Winter Storm, a very broad interpretation.</p> <p>16 THE COURT: Okay.</p> <p>17 What else do you want to say to me, and what else do 18 you want to say to me. And I can ruminate on this for a --</p> <p>19 MR. FOSTER: Well, your Honor, I would just -- I think 20 that -- I mean I --</p> <p>21 THE COURT: I don't buy the Judge Sweet jurisdiction 22 argument, okay, I don't buy that. I don't buy that that --</p> <p>23 MR. FOSTER: I guess, your Honor, I will be the first 24 to recognize that the flourishing of Rule B practice has become 25 an inconvenience unto the Court.</p>

<p style="text-align: right;">Page 10</p> <p>1 THE COURT: Well, I think it is more than an 2 inconvenience. It is just a classic example of not thinking 3 through the practical consequences of a decision. And I say 4 this with the highest regard to my dear friend, Judge Haight 5 who knows more about ships at sea than all of the rest of us 6 combined ever will. But perhaps less about electronic fund 7 transfers. And I do note that then Chief Judge Walker, 8 indicated in a footnote in <i>Aqua Stoli</i> that there are at least 9 some people on the Second Circuit who are questioning the 10 correctness or, if not the wisdom, of <i>Winter Storm</i>. But of 11 course that is their problem to solve, that is not my problem 12 to solve. I have to do what they tell me to do.</p> <p>13 MR. FOSTER: Understood, your Honor. And all of us 14 can only play the hand we're dealt.</p> <p>15 THE COURT: Correct.</p> <p>16 MR. FOSTER: But I mean I -- I guess, notwithstanding 17 the footnote in <i>Aqua Stoli</i> which, to my understanding, it has 18 been principally Judge Rakoff who has run with that ball that 19 most of the judges in the district have looked on this whole 20 proceeding as pretty straightforward. And, in fact, the -- one 21 of the cautions in the <i>Aqua Stoli</i> opinion is that what this 22 should become is a fact intensive sort of exercise, because 23 then we'll --</p> <p>24 THE COURT: But that is not the statute Congress 25 wrote.</p>	<p style="text-align: right;">Page 12</p> <p>1 in personam lawsuit in a jurisdiction adjacent to the one in 2 which the attachment proceedings were brought. That is the 3 across the river. A maritime attachment would likewise be 4 properly vacated if the plaintiff and the defendant are both 5 present in the same district and would be subject to 6 jurisdiction there. Didn't say present in the same 7 jurisdiction. Believe me, I am sympathetic to the argument --</p> <p>8 MR. DUFFY: Yes.</p> <p>9 THE COURT: -- that both the plaintiff and the 10 defendant in this case are present in the same jurisdiction, 11 and it is nowhere in the United States.</p> <p>12 MR. DUFFY: That's correct.</p> <p>13 THE COURT: I am sympathetic to that.</p> <p>14 But it seems to me, that what the Circuit very clearly 15 said is that I could properly vacate the attachment if both 16 parties were present in the same district, which is a term of 17 art under federal jurisprudence, and refers to a district court 18 within the United States Federal Court system, not someplace 19 overseas.</p> <p>20 And I know that Judge Sweet opined otherwise. I can 21 only say this. That was about the fifth line of reasoning for 22 them. He didn't have to go there, he didn't have to say that. 23 And because he was so clearly right on everything that had come 24 before that, and -- and I just -- I don't think that that is 25 what the Second Circuit was saying at all so, no, that argument</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. FOSTER: I'm sorry, your Honor?</p> <p>2 THE COURT: Because that is not the statute Congress 3 wrote, or the rule that Congress didn't overturn.</p> <p>4 MR. FOSTER: Exactly, exactly.</p> <p>5 So it is going back to the earlier point. I mean the 6 rule is what it is. And <i>Winter Storm</i> and <i>Aqua Stoli</i> are what 7 they are, your Honor. And my submission would be that I think 8 this is pretty straightforward and that -- and that frankly the 9 whole thing would be simplified if Agrocorp simply gave us a 10 letter of credit.</p> <p>11 Thank you.</p> <p>12 MR. DUFFY: Yes, your Honor. So I am understanding 13 your point that we're not going too far on the first argument.</p> <p>14 THE COURT: We're not going anywhere on the first 15 argument.</p> <p>16 MR. DUFFY: Okay.</p> <p>17 THE COURT: I had read <i>Aqua Stoli</i> before today, and I 18 read it again today. And I do believe that when the Second 19 Circuit uses the word -- is <i>Aqua Stoli</i> here -- jurisdiction -- 20 or it talks about districts, not just about jurisdiction.</p> <p>21 MR. DUFFY: As opposed to --</p> <p>22 THE COURT: Not just about jurisdiction.</p> <p>23 MR. DUFFY: Yeah.</p> <p>24 THE COURT: It says: A district court may vacate 25 maritime attachment only if a defendant would be subject to an</p>	<p style="text-align: right;">Page 13</p> <p>1 isn't going to cut it with me.</p> <p>2 MR. DUFFY: Okay.</p> <p>3 THE COURT: I --</p> <p>4 MR. DUFFY: I'm, you know, I --</p> <p>5 THE COURT: And since you conceded --</p> <p>6 MR. DUFFY: Yeah.</p> <p>7 THE COURT: -- that the Rule B showing has been made 8 with plaintiff, if this were just Agrocorp's application, I 9 would simply deny the motion and that would be it. The only 10 thing that is intriguing here is the Indian Bank financing 11 argument and application --</p> <p>12 MR. DUFFY: Yeah.</p> <p>13 THE COURT: -- so.</p> <p>14 MR. DUFFY: If you would bear with me one second, your 15 Honor. The only thing I would say about the district is it 16 kind of reaches in a logical conclusion that if two parties are 17 in the United States in the same district, they are forbidden 18 from coming to New York to get security for an attachment that 19 they are arbitrating down in Huston.</p> <p>20 THE COURT: They are not forbidden, but a court 21 exercising equitable discretion may conclude that it would be 22 better to attach whatever assets were down in Huston where the 23 two companies were, than to worry about electronic funds 24 transfers in New York.</p> <p>25 Look, this whole thing, we don't do a lot of this in</p>

<p style="text-align: right;">Page 14</p> <p>1 White Plains. And this, the whole thing is a new area of 2 jurisprudence for me. And I, as a policy, I fine horrifying 3 that -- that one could, by virtue of the fortuity of the fact 4 that every banking transaction in the world seems to hop 5 through New York, you can get in rem jurisdiction in a maritime 6 action, that has nothing do with New York -- or with the United 7 States, for that matter -- and that is between two foreign 8 enterprises and yet if you look back at the history of maritime 9 jurisprudence, there is an awful lot of it that doesn't involve 10 entities on either side that were in the United States. They 11 happened to have assets in the United States. I mean in the 12 olden days, it was a cargo ship that was sitting in a harbor 13 somewhere in the United States, and then it was convenient bank 14 account that was kept in the United States. And the Second 15 Circuit has decided in its wisdom for the time being that they 16 will include electronic fund transfers that are going be here 17 for 10 or 15 seconds in the United States. So, there is 18 nothing I can do about that.</p> <p>19 MR. DUFFY: Okay, point taken, your Honor.</p> <p>20 I would just address the other point, then on the 21 Indian bank's motion. And, again, I won't profess to be an 22 expert in secure transactions or anything else like that. I'm 23 basically a maritime lawyer, but I am familiar with these 24 things.</p> <p>25 My understanding of trust receipts is it was used in</p>	<p style="text-align: right;">Page 16</p> <p>1 lading and that there is a buyer set up who has a letter of 2 credit open so that when I collect them and I present them --</p> <p>3 THE COURT: I'll forget the documents at the bank 4 window and I'll get paid.</p> <p>5 MR. DUFFY: And I'll get paid, and you're out of it 6 until whatever is left over, I'll credit into your account.</p> <p>7 I'm never debiting your account, I'm never loaning you money, 8 I'm in this for business. And that is why this is the same 9 case --</p> <p>10 THE COURT: I kind of disagree with, I'm never loaning 11 you money. I'm not giving you a traditional bank loan, but 12 that is not what fact over financing is ever about. Of course 13 I'm loaning you money. I didn't buy the rapeseed. What does 14 Indian Bank want with rapeseed, they have no use for rapeseed.</p> <p>15 MR. DUFFY: That's why it is the same as the situation 16 in Prime Shipping because, there, the defendant Wajilam, he 17 went to his bank and he said, look, I need the money fast, 18 discount this and you'll take the money. And I mean that is 19 exactly what was going on here. You have more money than I do, 20 you have cash available, you take care of this, and we'll -- 21 get things -- we'll get the sale done.</p> <p>22 THE COURT: All right.</p> <p>23 Let me disappear for a few minutes, okay.</p> <p>24 MR. DUFFY: Okay, your Honor.</p> <p>25 THE COURT: A want to look at Judge Rakoff's and Judge</p>
<p style="text-align: right;">Page 15</p> <p>1 the United States years ago -- as a matter of fact there was a 2 trust receipts act that they had that kind of got subsumed by 3 the UCC, in Article 9 secured interest. And it is just not a 4 popular means of financing in the United States anymore.</p> <p>5 THE COURT: Clear that none of us has ever heard of 6 it.</p> <p>7 MR. DUFFY: But it's still used. I mean the clients 8 here are based in Singapore. But they are basically an Indian 9 trading company, and they are used quite often in foreign 10 countries. And especially -- I don't want to say -- I'm not 11 going to say it on the record. You know, developing 12 countries or expanding countries.</p> <p>13 THE COURT: And I would say based on what you have 14 said, it seems that it's something that is still recognized in 15 parts of the old British empire.</p> <p>16 MR. DUFFY: Correct, your Honor.</p> <p>17 And I would submit to you on the same case, I mean the 18 parties in this case, they could have gone and opened up a 19 letter of credit with Indian Bank and said, here, we'll open up 20 a letter of credit in favor of this buyer who is selling 21 Ukrainian rapeseed, but they don't go through all of those 22 motions, because they had a relationship with the bank for 16 23 years. The bank said, look, all I'm interested in is I'm 24 willing to pay the money, but I don't want to get in a position 25 where I get scammed, so you make sure that I get the bills of</p>	<p style="text-align: right;">Page 17</p> <p>1 Pauley's decision here.</p> <p>2 (recess)</p> <p>3 THE DEPUTY CLERK: Come to order please.</p> <p>4 THE COURT: Okay. See if I can dispose of this.</p> <p>5 The plaintiff, Prestigious Shipping Company, Limited, 6 obtained from this Court some weeks ago --</p> <p>7 I can't remember the exact date, but --</p> <p>8 MR. FOSTER: August 9th, your Honor.</p> <p>9 THE COURT: -- August 9. Thank you.</p> <p>10 -- a process of maritime attachment and garnishment ex 11 parte against defendant, Agrocorp International, PTE, Limited.</p> <p>12 Prestigious had asserted a claim against Agrocorp for 13 breach of the charter party, dated February 21, 2005. That 14 claim is presently being arbitrated in London, England. With 15 the issuance of the process of maritime attachment and 16 garnishment this Court authored Prestigious to attach property 17 of Agrocorp which could be found in possession of garnishees 18 located in the Southern District of New York up to the amount 19 of \$2,160,761.06, as security for the claim which is presently 20 being arbitrated in London.</p> <p>21 The process of attachment and garnishment was served 22 on several banks in New York. One garnishee restrained on the 23 21st of August, I believe, and I got that date off one of the 24 exhibits in Indian Bank's submission to the Court, that being 25 the fax from American Express Bank to Agrocorp, indicating that</p>

<p>1 the moneys had been restrained.</p> <p>2 So on or about the 21st of August, American Express</p> <p>3 Bank restrained an electronic transfer in amount of \$604,036.93</p> <p>4 that was being remitted by Indian Bank, a bank with which</p> <p>5 Agrocorp has had a business relationship for many years –</p> <p>6 according to counsel. I am in no position to dispute that,</p> <p>7 seems to be correct. And it was being remitted to the account</p> <p>8 of a nonparty seller whose name is --</p> <p>9 Firebird, I believe?</p> <p>10 MR. DUFFY: Firebird, Limited. Yes, your Honor.</p> <p>11 THE COURT: Firebird, Limited, located in Riga,</p> <p>12 Latvia.</p> <p>13 The underlying cargo that this particular transfer</p> <p>14 related to was a cargo of rapeseed which was being shipped from</p> <p>15 the Ukraine, where it had been purchased. And, I believe –</p> <p>16 let me see if I can – I have to find it. The contract date</p> <p>17 between Firebird and Agrocorp was July 11, 2007. That is</p> <p>18 exhibit 2 to Indian Bank's submission. The invoice was</p> <p>19 actually dated July 8th, 2007, and that's exhibit 3. And</p> <p>20 sometime prior to August 20, Agrocorp had, you know,</p> <p>21 back-to-back transaction, resold the cargo of rapeseed to</p> <p>22 another party, who fortunately has nothing do with this matter,</p> <p>23 because there are already too many parties for me to remember</p> <p>24 all of the names.</p> <p>25 So, the attachment and garnishment process issued, as</p>	Page 18	Page 20
<p>1 I say, on the ninth of August. The invoice had issued for the</p> <p>2 rapeseed. The money was due. And so it appears that Agrocorp</p> <p>3 went to its bank, Indian Bank, in Singapore, a bank with which</p> <p>4 they had a preexisting banking facility – a copy of which is</p> <p>5 attached to Indian Bank's application as exhibit 1 - and asked</p> <p>6 Indian Bank to finance the purchase of the rapeseed. And the</p> <p>7 critical exhibit for this purpose is Indian Bank's exhibit 4,</p> <p>8 by fax and by hand, on Agrocorp International PTE, Limited</p> <p>9 stationery, dated 20 August 2007 or 11 days after the</p> <p>10 attachment order issued. And it's a request for invoice</p> <p>11 financing for U.S. dollars 604,036.93 import drawn by M.S.</p> <p>12 Firebird, Limited tort shipment of 1351 MTS Ukraine rapeseed</p> <p>13 shipped by vessel MV Rita, V70018M.</p> <p>14 This communication sent by a Mr. Yingar, a director of</p> <p>15 Agrocorp said: We enclose herewith a copy of the supplier's</p> <p>16 invoice and the necessary T/R – which I believe means trust</p> <p>17 receipts – form for import trust receipts financing in U.S.</p> <p>18 dollar currency for amount \$604,036.93 for the shipment of the</p> <p>19 Ukrainian rapeseed from Illichivsk, Ukraine to Chittagong</p> <p>20 Bangladesh on board MV Riga. We request to seek approval to</p> <p>21 remit the funds to subject party. Please note that we have</p> <p>22 taken possession of the goods and sale to MS Bengal Corporation</p> <p>23 and MS Bismillah Dahl Mill, Bangladesh, on letter of credit</p> <p>24 sight terms; that is to say that the sale by Agrocorp to its</p> <p>25 purchaser required the purchaser to post a letter of credit on</p>	Page 19	Page 21

<p style="text-align: right;">Page 22</p> <p>1 The first ground was that the Court should exercise 2 its equitable power as reserved by the United States Court of 3 Appeals for the Second Circuit in the <i>Aqua Stoli</i> case, 4 460 F3d. 434, and should vacate the attachment on the ground 5 that both the plaintiff and the defendant in this action, 6 Prestigious and Agrocorp, can be found in Singapore, and would 7 be subject to jurisdiction there. And counsel for Prestigious 8 argued that this was one of the grounds that the Second Circuit 9 had specifically identified in <i>Aqua Stoli</i>, as a ground on which 10 a district court would have equitable discretion to vacate a 11 maritime attachment that complied with maritime Rule B. And 12 for purposes of this application, it is conceded by Prestigious 13 that this particular attachment complies with maritime Rule B. 14 That is to say Prestigious has conceded for purposes of this 15 motion that — or I should say Agrocorp has conceded for 16 purposes of this motion that Prestigious has a valid prima 17 facia admiralty claim against Agrocorp, that Agrocorp cannot 18 be found within the Southern District of New York, that its 19 property may be found within the district, and there is no 20 statutory and maritime bar to the attachment.</p> <p>21 So until India Bank got in and said it was my property 22 and it is not their property, I had basically a concession that 23 it was a proper Rule B maritime attachment.</p> <p>24 And, as I say, Mr. Duffy argued that the attachment 25 should be vacated because both plaintiff and defendant were</p>	<p style="text-align: right;">Page 24</p> <p>1 brought, which would mean were brought — would mean for our 2 purposes were the attachment proceedings brought here, the 3 eastern, southern -- or eastern, western or northern districts 4 of New York, all of which are, at some point, adjacent to the 5 Southern District of New York, perhaps the District of 6 Connecticut and New Jersey, as well, but there is no evidence 7 in the record to indicate that Agrocorp is present in any of 8 those jurisdictions, so we're not talking about that particular 9 exception.</p> <p>10 Vacatur would also be proper, the Second Circuit said, 11 if the defendant's assets sufficient to satisfy a judgement 12 have already been secured elsewhere, yet the plaintiff seeks a 13 further attachment. An example of this particular reason for 14 vacating attachment is Judge Sweet's vacatur of the attachment 15 in <i>OGI Ocean Gate Transportation Company against RP Logistic</i> 16 PVC, Limited, which can be found at 2007 US District Lexus 17 46841. And, in that case, the amount of the debt was \$45,000. 18 And \$45,000 had been attached somewhere else. And, therefore, 19 what I think comes to foster, counsel for what Prestigious has 20 referred to as double dipping reason for exercising equitable 21 discretion and vacating attachment did not apply.</p> <p>22 So, that leaves the one that the defendant cited. And 23 the problem is that what the Second Circuit said is not exactly 24 what the defendant said the Second Circuit said.</p> <p>25 The Second Circuit said the maritime attachment would</p>
<p style="text-align: right;">Page 23</p> <p>1 present in different jurisdictions and would be subject to 2 jurisdiction there, that jurisdiction being Singapore.</p> <p>3 As I indicated during oral argument, I did not find 4 this line of reasoning particularly persuasive, although I 5 think it is immensely clever.</p> <p>6 The Second Circuit in <i>Aqua Stoli</i> basically did all but 7 tie the hands of a district court when confronted with a 8 maritime attachment that complies with the requirements of 9 Rules B and E.</p> <p>10 The Second Circuit did say that district courts are 11 not without any equitable discretion to vacate maritime 12 attachments that comply with Rule B. But it said that 13 following integrated and other prerule E(4)(f)cases, we believe 14 that an attachment may be vacated only in certain limited 15 circumstances, taking care to note that the precise bounds of a 16 district court vacatur powers were not then before it.</p> <p>17 The Second Circuit identified three circumstances in 18 which it thought it would be appropriate for a district court 19 in an exercise in equitable discretion to vacate a maritime 20 attachment. One was the across-the-river situation, where the 21 defendant can show that it would be subject to in personam 22 jurisdiction. In another jurisdiction that was convenient to 23 the plaintiff, the Second Circuit indicated that the concept of 24 convenience was a narrowly circumscribed one, that convenient 25 meant adjacent to the one in the attachment proceedings were</p>	<p style="text-align: right;">Page 25</p> <p>1 likewise be properly vacated if the plaintiff and defendants 2 are both present in the same district and would be subject to 3 jurisdiction there. But the plaintiff goes to another district 4 to attach defendant's assets. I do not understand the Republic 5 of Singapore to be a district within the meaning of that term 6 as used by the Second Circuit. And I do not understand the 7 Second Circuit's statement to be an authorization by this Court 8 to vacate a maritime attachment when both the plaintiff and the 9 defendant can be found in another jurisdiction all together, 10 that jurisdiction being in a country half way around the world.</p> <p>11 Therefore, I have to reject the defendant, Agrocorp's 12 argument that the attachment ought to be vacated on that 13 ground.</p> <p>14 Much more interesting is the argument made by Indian 15 Bank, which is that the money doesn't belong to Agrocorp, the 16 money belongs to it.</p> <p>17 Prestigious concedes that there appears to be a bone 18 fida financing transaction between Agrocorp and Indian Bank, 19 which are not related entities.</p> <p>20 The transaction was conveniently entered into, not at 21 the time of the original purchase of the rapeseed, but at the 22 time the bill came due, with Agrocorp being, at that time, on 23 notice that a process of maritime attachment and garnishment 24 had issued against it and, no doubt, being well aware that in 25 this Circuit, under the Winter Storm decision, electronic fund</p>

<p>1 transfers would be attachable under Rule B.</p> <p>2 So, instead of paying the bill itself to Firebird,</p> <p>3 Agrocorp went to Indian Bank and got Indian Bank to pay the</p> <p>4 bill to Firebird. It was, of course, a debt of Agrocorp that</p> <p>5 was paid, Indian Bank, having had no prior relationship with</p> <p>6 Firebird or in connection with this transaction or other reason</p> <p>7 to pay any money, let alone \$600,000 to Firebird, Limited.</p> <p>8 The question that confronts this Court is really which</p> <p>9 of two district court decisions, by two eminent colleagues of</p> <p>10 mine, to follow.</p> <p>11 Judge Rakoff's decision in the — I can't remember the</p> <p>12 name of that case — Prime Shipping Company case, 2006 US</p> <p>13 District Lexis 34637, in which Judge Rakoff concluded that, "a</p> <p>14 defendant, Wajilam Exports, did not have a financial interest</p> <p>15 in a fund transfer that was made pursuant to an ordinary letter</p> <p>16 of credit. That had been issued -- that had been purchased by</p> <p>17 Bank Paribas, BNP, in order to finance the sale of logs,</p> <p>18 certain items. Wajilam sells logs to buyers of Asia. And one</p> <p>19 buyer obtained a negotiable letter of credit to purchase a</p> <p>20 cargo of logs, and Paribas bought that letter of credit and had</p> <p>21 presented it. And the funds were being transferred in response</p> <p>22 to that presentation when they were netted by American Express</p> <p>23 Bank here in New York. And Judge Rakoff concluded that because</p> <p>24 of the nature of the letter of credit transaction, and the fact</p> <p>25 that the fundamental principle of letters of credit is that the</p>	<p>Page 26</p> <p>1 Caribe De Navegacion — which I'll give to the court reporter</p> <p>2 so she can spell it — 169 F.Supp 2d. 1341 at 135960, which I</p> <p>3 have taken a look at and in which a magistrate judge concluded</p> <p>4 that the plaintiff had provided evidence that funds nominally</p> <p>5 belonging to nonparties were, in fact, controlled by the</p> <p>6 defendant on the basis inter alia that the funds were paid by</p> <p>7 the nonparty at the party's specific direction, thereby</p> <p>8 indicating the party, Mar Caribe's, abilities to control the</p> <p>9 account of the nonparty.</p> <p>10 One, I had never heard of trust receipts before today.</p> <p>11 I have been educated on this ancient and venerable method of</p> <p>12 financing which apparently is not much used, post uniform</p> <p>13 commercial code in the United States, but there are places in</p> <p>14 the world where there is no UCC and it is used and, apparently,</p> <p>15 it can be used as an alternative to a letter of credit. I am,</p> <p>16 however, convinced that the differences here are such that it</p> <p>17 is Judge Pauley's decision, rather than Judge Rakoff's decision</p> <p>18 that I ought to follow, particularly since the Aqua Stoli court</p> <p>19 really made it quite clear that district courts are not to get</p> <p>20 involved in and engaged in these intensive factfinding</p> <p>21 proceedings, whereas, here, the parties have conceded the</p> <p>22 procedural and the Rule B regularity of this particular</p> <p>23 attachment for purposes of the vacatur motion.</p> <p>24 Now, why do I come down in this particular way. As I</p> <p>25 mentioned earlier, the financing for this particular purchase</p>
<p>1 issuing bank's obligation to honor drafts drawn on a letter is</p> <p>2 separate and independent from any obligation of its customer to</p> <p>3 the beneficiary under the sale of goods contract and separate</p> <p>4 as well from any obligation to issuer to its customer under</p> <p>5 their agreement. He concluded that Paribas was entitled to the</p> <p>6 money, and that the attachment would be vacated.</p> <p>7 About three weeks ago, my equally eminent colleague</p> <p>8 Judge Pauley, in a case that did not involve a letter of credit</p> <p>9 but that involved one related corporation's paying the debt of</p> <p>10 another related corporation, concluded that even though the</p> <p>11 paying Corporation -- Judge Pauley in the SR International</p> <p>12 Limited v. Mar Trade Gulf Logistics case, 2007 Westlaw 2456629</p> <p>13 concluded that the property of Mar Log, a nonparty to the</p> <p>14 action, could be attached under Rule B, because it was being</p> <p>15 used to pay the debt of Mar Trade, an affiliated corporation.</p> <p>16 And, indeed, everybody admitted to Judge Pauley that Mar</p> <p>17 Log's — the nonparty Mar Log's payment of an invoice issued</p> <p>18 from Im Chait to Mar Trade was made not only for Mar Trade's</p> <p>19 benefit, but that transfer had been orchestrated precisely to</p> <p>20 avoid the attachment order. And Judge Pauley concluded that</p> <p>21 this established that Mar Trade had a property interest in the</p> <p>22 June 1st electronic funds transfer sufficient to render it</p> <p>23 attachable under Rule B.</p> <p>24 He did that in part on the authority of the Middle</p> <p>25 District of Florida case, Linea Navira De Cabotaje v. Mar</p>	<p>Page 27</p> <p>1 was arranged, significantly after the purchase, and shortly</p> <p>2 after the time that this Court issued the maritime attachment</p> <p>3 process.</p> <p>4 Agrocorp, explicitly directed that Indian Bank pay the</p> <p>5 amount of the invoice that was owed by Agrocorp to Firebird.</p> <p>6 It was obviously done for benefit of Agrocorp. Indian Bank</p> <p>7 takes the position that it was its money, not a loan, to its</p> <p>8 client, Agrocorp, that was being used to pay these proceeds.</p> <p>9 That, it seems to me, overlooks the nature of</p> <p>10 nonletter of credit financing transactions and the realities of</p> <p>11 those transactions. It was the intent of parties here, that</p> <p>12 Agrocorp — that Indian bank would take possession of, and it</p> <p>13 may have been in position of the documents that would enable it</p> <p>14 to present the letter of credit that had been issued by the</p> <p>15 people who were buying the rapeseed from Agrocorp. To whatever</p> <p>16 bank that had issued that letter of credit. I don't know what</p> <p>17 bank did that letter of credit. I don't have a copy of that</p> <p>18 letter of credit. But Indian bank, therefore, would be in a</p> <p>19 position to present the letter of credit as Paribas presented</p> <p>20 the letter of credit, and to collect the proceeds from the sale</p> <p>21 of the Ukrainian rapeseed by Agrocorp to the third-party</p> <p>22 purchaser. And then it was the intention, according to</p> <p>23 counsel — of course, I — I believe him, because it makes</p> <p>24 sense. It was the intention of Indian Bank to take possession</p> <p>25 of the money from the letter of credit and, at that point, to</p>

Page 30

1 repay itself for the money that it used to pay Firebird and
 2 take out its fee and give the rest of the money, the rest of
 3 the profit, to Agrocorp.

4 It is, therefore, not slight of hand. I don't want to
 5 suggest that it is slight of hand. But it is not exactly
 6 correct to say that Indian Bank was not advancing moneys, if
 7 not directly to its client, then on behalf of its client. And,
 8 for that reason, it is possible for this Court to find, as was
 9 found in Linea Navira, and this summer by Judge Pauley in the
 10 SR case, that the defendant in this case, Agrocorp, has an
 11 interest in the funds, that were being EFT'd through New York
 12 and that were netted by American Express Bank. Even though
 13 those funds were being EFT'd by a third party, Indian Bank to a
 14 third party, Firebird.

15 In so ruling, I am, as Judge Pauley was, defining the
 16 word "property" under Rule B, broadly. The Second Circuit has
 17 indicated that we district judges are to define the word
 18 "property" broadly. I believe in the Winter Storm opinion,
 19 Judge Haight, whom I know to be a biblical scholar an ardent
 20 Episcopalian and former warden of his church, quoted a treatise
 21 which said that the words were to be interpreted as broadly as
 22 a phrase from the Nicene Creed, all things visible and
 23 invisible.

24 And if one interprets the phrase, the word "property"
 25 Under Rule B, as broadly as "all things visible and invisible,"

Page 32

1 And I should say, that there is ample authority among
 2 the judges of this Court for the proposition that money can't,
 3 in fact, be the property of two or more people.
 4 Judge Pauley certainly cited to that proposition.
 5 It's been -- Judge Buchwald, in the HBC Hamburg Bulk Carriers
 6 case articulated that proposition. And I have read that case.
 7 And, yes, there undoubtedly are overlapping property rights as
 8 between Indian Bank and Agrocorp in that \$609,000. But
 9 Agrocorp has enough of an interest in that property to make it
 10 attachable and to warrant my denying the motion to vacate --
 11 motions, I should say, to vacate the attachment.

12 So, there you have it. I am now rapidly becoming
 13 acquainted with this emergent area of the law. I will be
 14 interested to see how these things develop in the Second
 15 Circuit, because this could quickly become the immigration
 16 docket of the Second Circuit for the Southern District of New
 17 York.

18 I think I have another one downstairs waiting to be
 19 signed.

20 Okay. Very interesting. Very interesting.

21 MR. FOSTER: Thank you, your Honor.

22 MR. DUFFY: Thank you, your Honor.

23 THE COURT: Thank you, gentlemen.

24 (Adjourned)

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Page 31

1 I have a hard time seeing how it is that Agrocorp does not have
 2 an interest in the money that Indian Bank was EFT'ing to pay
 3 the invoice that Agrocorp owed for the rapeseed.

4 And I think that Indian Bank is, therefore, in a
 5 significantly different position than Paribas was in the Prime
 6 Shipping case, where Paribas had obtained title to a negotiable
 7 letter of credit, appears to have been a sight letter, that was
 8 issued by one party to a transaction in favor of the defendant
 9 in the Prime Shipping case, and had presented the letter of
 10 credit for payment. And there was really going to be a
 11 disruption in the letter of credit process, payment process.

12 Whereas, here, the Indian Bank's position, I can't say
 13 this 100 percent for sure because I have looked through these
 14 documents at some length, but I'm -- I don't know if I'm
 15 missing something. But Indian Bank appears to have acquired,
 16 if I understood counsel correctly, the documents that would
 17 allow it to present the letter of credit issued by Agrocorp's
 18 seller for payment and get its money back. And the only person
 19 who would appear to be out of pocket would be Agrocorp, which
 20 is, after all, the party whose funds, whose property were being
 21 attached by the Rule B maritime attachment.

22 So, for that reason, I am going to decline to vacate
 23 the attachment, and I'm going to deny Indian Bank's application
 24 to free up the money on the ground that the money actually
 25 belongs to it.

Pages 30 - 32